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affected the substantial rights of an accused." It would seem that a civil court in *habeas corpus* proceedings might collaterally attack the jurisdiction of a court-martial upon showing of irregularity in injury of "substantial rights." The case now under discussion is the only one since 1916—at which time Article of War 37 became in its present form a part of the military code—in which *habeas corpus* has been directed at court-martial proceedings, and in that case no such contention was even advanced.

All these considerations point to the truth of the view previously advanced, namely, that jurisdiction is finally shown by the establishment of the four conditions set forth in the Manual for Courts-Martial, and that irregularity in practice or error in law cannot raise the question again.

It is evident in any event that the civil courts are unable to afford any sort of adequate protection against arbitrary, irregular, or unduly harsh action of courts-martial. Military law likewise fails to afford such protection, for while setting forth many directions and even positive rules designed to serve that end, it provides the most ineffective means of compelling compliance therewith.¹⁸ Some protection the soldier should have, and legislation as a means of securing it to him at least merits the consideration of thinking persons.¹⁹

E. M. P.

DURESS: FINANCIAL NECESSITY AS AN ELEMENT.—The question of duress as a defense to a contract, where there was involved neither the restraint of the person nor of the goods of the defendants, was presented recently to the District Court of Appeal, in the case of *Tisdale v. Bryant*.¹ The action was for the partition of a tract of land, an undivided one-half interest in which plaintiff claimed under an agreement made while defendants were experiencing financial difficulties. Defendants asserted that plaintiff took advantage of their financial embarrassments to force them into the agreement, and they sought to avoid the agreement on the ground that, because of their financial necessities, it was made under duress. The court held that the facts alleged were not sufficient to constitute duress.

Duress of the person, the only sort mentioned by Blackstone,² took the form of imprisonment or violence or threats of imprison-

¹⁸ In this connection cf. the testimony given on February 13, 1919, before the Senate Committee on Military Affairs by Brigadier-General Samuel T. Ansell, Acting Judge Advocate General of the Army. A resume of this testimony is given in the Army and Navy Journal for February 15, 1919, at page 853.

¹⁹ Reforms directed to this end are suggested in the bill introduced by Senator Chamberlain on January 13, 1919, into the Senate Committee on Military Affairs, and in the joint resolution proposed by Senator McKellar on February 18, 1919.

¹ (Nov. 23, 1918) 27 Cal. App. Dec. 692.

² 1 Bl. Com., § 178, 1 Jones' Edition, 224.

ment or violence to the person. It had been a defense to an obligation since Bracton's time.³ By analogy to duress of the person, the courts began to recognize duress of goods as a defense to a contract. The present state of the law is expressed as follows: "The legal conception of duress, originally so narrow as to apply only to cases of imprisonment or serious violence to the person, or threats of such imprisonment or violence, has gradually expanded under the influence of equity until it is now commonly said to consist of any actual or threatened unlawful exercise of power possessed or believed to be possessed by one party over the person or property of another, from which the latter has no other means of immediate relief than the performing of the required act."⁴

But this expansion has continued even beyond duress of goods. Although no other form of duress has been specifically recognized either by the courts or by text writers, there are cases in which the courts have held duress to be present without threats or violence either to person or property. Such a case was *Vyne v. Glenn*.⁵ There plaintiff was forced into a settlement for a sum less than the amount due him by defendant's interference and threatened interference with the payment of money due plaintiff from other parties. These facts the Supreme Court of Michigan considered sufficient to constitute duress, and plaintiff was allowed to recover the balance due him. As the courts recognized duress of goods from its analogy to duress of the person, so they are coming to recognize this type of duress, where the actual or threatened restraint is upon the rights of the individual. This type may be called duress of rights.

The reason for permitting duress to be set up as a defense to a contract is well stated in the case of *Fairbanks v. Snow*:⁶ ". . . the ground upon which a contract is voidable for duress is the same as that in the case of fraud; and it is that, whether it springs from a fear or from a belief, the party has been subjected to an improper motive for action."

The application of the principle of duress to the facts of the particular cases has not been easy. It is well settled that when a party threatens or does what he has a right to do, no matter what the effect on the other party, there is no duress. Threatening an action for an accounting during a financial panic,⁷ or demanding the winding up of a partnership when the business is failing, did not amount to duress.⁸ "In a legal sense a person cannot be said to have taken an undue advantage of another or

³ Ames, *Lectures on Legal History*, 113.

⁴ Woodward, *Quasi Contracts*, § 212, p. 337.

⁵ (1879) 41 Mich. 112, 1 N. W. 997.

⁶ (1887) 145 Mass. 153, 13 N. E. 596.

⁷ *Morton v. Morris* (1896) 72 Fed. 392.

⁸ *Fuller v. Roberts* (1895) 35 Fla. 110, 17 So. 359, 87 Am. Dec. 178.

to have done any wrong, when he merely threatens to enforce his rights in a civil action in the ordinary form."⁹

The test most often laid down by the courts in cases of this kind is the lawfulness or unlawfulness of the threats or acts charged to amount to duress. "Legal duress implies that a party has been unlawfully constrained by another to perform an act under circumstances which prevent the exercise of free will. The act of the party compelling the unwilling obedience must be unlawful and wrongful; and there can be no duress of goods in law where the act done or threatened is nothing more than what the party had a legal right to do."¹⁰ But just where this line may be drawn depends upon what is meant by an unlawful act. If by an unlawful act is meant a tortious act, this criterion holds. But the mere breach of a contract, although it gives rise to a remedial right, is not such an unlawful act as to constitute duress. The leading case on this subject is *Astley v. Reynolds*.¹¹ A pawnbroker refused to deliver plate deposited with him until an unlawful demand for money was paid. This the plaintiff was allowed to recover. In line with this case, the American courts have held duress to exist in the following circumstances: threatening to remove a slave until a falsely claimed debt was paid;¹² attaching and holding oysters until excessive transportation charges were paid;¹³ unlawful seizure of goods on high seas and refusal to part with them except at public sale;¹⁴ refusal to deliver land warrants until overcharges were paid;¹⁵ refusal to deliver oats until overcharges were paid;¹⁶ threat to attach property until illegally imposed tax was paid;¹⁷ refusal to surrender logs until illegal boomage was paid;¹⁸ refusal by an express company to deliver goods until an amount greater than that due was paid.¹⁹

But these cases all involve torts. A mere breach of contract or threat to break a contract has not as yet been held to amount to duress. Such cases often take the form of a refusal to pay money due until some demand has been complied with: making new contracts;²⁰ paying higher than the contract price;²¹ signing new charter-parties with smaller compensation than that originally agreed upon.²² A promissory note given under a threat to sell a

⁹ *Fuller v. Roberts*, *supra*, n. 7.

¹⁰ *Morton v. Morris*, *supra*, n. 8.

¹¹ (1732) 2 Strange, 915, 93 Eng. Rep. R. 939.

¹² *Crawford v. Cato* (1857) 22 Ga. 594.

¹³ *Spaids v. Barrett* (1870) 57 Ill. 289, 11 Am. Rep. 10.

¹⁴ *Sasportas v. Jennings* (1795) 1 Bay 470 (S. C.).

¹⁵ *White v. Heylman* (1859) 34 Pa. St. 142.

¹⁶ *Beckwith v. Frisbie* (1860) 32 Vt. 559.

¹⁷ *Preston v. Boston* (1831) 12 Pick. 7 (Mass.).

¹⁸ *Chase v. Dwinal* (1830) 7 Greenl. 134 (Me.), 20 Am. Dec. 352.

¹⁹ *Harmony v. Bingham* (1854) 12 N. Y. 98, 62 Am. Dec. 142.

²⁰ *Cable v. Foley* (1891) 45 Minn. 421, 47 N. W. 1135.

²¹ *Goebel v. Linn* (1882) 47 Mich. 489, 11 N. W. 284, 41 Am. Rep. 723.

²² *Silliman v. U. S.* (1879) 101 U. S. 465, 25 L. Ed. 987, 15 Ct. Cl. 629
25 Sup. Ct. Rep. 987.

partnership interest to a stranger contrary to a promise was held not given under duress.²³ In *Hackley v. Headley*,²⁴ the Michigan court would not allow a recovery by plaintiff after he had given a receipt in full for less than the amount due in order to get an immediate payment. The line at present between cases where recovery is permitted on the ground of duress and where recovery is denied on such ground seems to run between cases where the unlawful demand constitutes a tort and where it constitutes a mere threat to break a contract. The case under review is far from the border. There is nothing to show that plaintiff is responsible for defendant's financial difficulties. Plaintiff neither broke a contract nor committed a tort.

L. B. S.

LANDLORD AND TENANT: WHEN TENANT IS NOT ESTOPPED TO DENY LANDLORD'S TITLE.—In *Hambey v. Wood*¹ the District Court of Appeal affirmed the rule laid down in *Tewksbury v. Magraff*,² and sustained by subsequent decisions in California,³ that the rule that a tenant is estopped to deny his landlord's title does not apply where the tenant was in possession at the time of taking the lease. The scope of the earlier decisions has, it is true, been somewhat modified by later ones, holding that in actions such as unlawful detainer where title could not be tried the rule does not apply.⁴ The tenant indeed, even in such actions, may show actual fraud in the making of the lease,⁵ or may show that the landlord's title has expired during the lease.⁶ Another limitation on the rule in *Tewksbury v. Magraff* is that the tenant will not be allowed to dispute the title of the landlord where the lease is given as security for a loan.⁷ Another limitation is that production of the lease, whether during its term or after its expiration, makes a *prima facie* case for the landlord and the burden of proof is upon the tenant to prove title in himself.⁸

Even with the modifications mentioned, the California court stands practically alone in its view of this matter.⁹ The great weight of authority is that the estoppel is not dependent on whether

²³ *Taylor v. Ford* (1901) 131 Cal. 440, 63 Pac. 770.

²⁴ (1881) 45 Mich. 569, 8 N. W. 511.

¹ (1918) 28 Cal. App. Dec. 5.

² (1867) 33 Cal. 237.

³ *Franklin v. Merida* (1868) 35 Cal. 558.

⁴ *Mason v. Wolff* (1870) 40 Cal. 246.

⁵ *Simon Newman Co. v. Lassing* (1903) 141 Cal. 174, 74 Pac. 761; *Knowles v. Murphy* (1895) 107 Cal. 107, 40 Pac. 111.

⁶ *Teich v. Arms* (1907) 5 Cal. App. 475, 90 Pac. 962.

⁷ *Knowles v. Murphy* (1895) 107 Cal. 107, 40 Pac. 111.

⁸ *De Peralta v. Ginocchio* (1874) 47 Cal. 459; *Hallway v. Galliac* (1874) 47 Cal. 474; *Abbey Homestead Assoc. v. Willard* (1874) 48 Cal. 614.

⁹ See 6 *American Law Review*, 1; *Bigelow on Estoppel*, 570; 1 *Tiffany, Landlord and Tenant*, 471 et seq.